

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13687, of B.B. & H. Joint Venture, pursuant to Sub-section 8207.2 and Paragraph 8207.11 of the Zoning Regulations, for a special exception under Paragraph 3101.410 or Sub-section 7205.3 or in the alternative a variance from the use provisions (Sub-section 3101.3) to establish an accessory parking lot in an R-1-B District at the premises 4422 Connecticut Avenue, N.W., (Square 1971, Lot 822).

HEARING DATE: February 24, 1982
DECISION DATE: March 3, 1982

FINDINGS OF FACT:

1. The subject site is located on the west side of a public alley which runs parallel to Connecticut Avenue between Yuma and Albemarle Streets, N.W. and is known as rear of 4422 Connecticut Avenue, N.W. It is zoned R-1-B.

2. By BZA Order No. 13346, dated March 5, 1981, the Board denied a request for a special exception to establish an accessory parking lot on the subject site. The Conclusions of Law in that Order state that the applicant did not meet the requirements of Sub-paragraph 3101.4103, in that the applicant presented no evidence that the parking could not be located within the principal building or on the same lot on which such building or use is permitted, and Sub-paragraph 3101.4104, as evidenced by the concerns of the Advisory Neighborhood Commission, the Citizens Committee Legal Fund, and letters and appearances at the public hearing of neighborhood businessmen and homeowners in opposition to the application. The Board further concluded that the subject parking was not required under the Zoning Regulations, but was for the convenience of patrons of the restaurant and would overintensify the activities in the area and thus adversely impact the neighborhood.

3. The applicant again proposes to use the subject site as a parking lot that will be accessory to the existing Burger King restaurant at 4422 Connecticut Avenue across the alley to the east of the subject site.

4. The frontage on Connecticut Avenue in the immediate area is zoned C-3-A. It is developed with commercial uses which include a beauty salon, banks, and a Burger King drive-in restaurant. The subject lot abuts a residential

area to the west. The intersections of the alley at Yuma and Albemarle Streets are in close proximity to the residential area. The west side of the alley is used for various parking purposes from Yuma to Albemarle Streets.

5. The Burger King restaurant provides eight on-site parking spaces to serve its customers. There are also four metered parking spaces on Connecticut Avenue in front of the facility. The proposed accessory parking lot would provide an additional eighteen spaces to serve the Burger King's patrons. The existing restaurant and the eight required parking spaces occupy the entire lot east of the alley.

6. The topography of the subject lot rises sharply at the western portion of the site adjacent to the rear of the abutting residential property. There are existing vegetation and trees on this sloping portion of the lot which, along with the change in elevation, provide a natural buffer between the subject lot and adjacent residential properties and, further alleviate erosion problems on this portion of the site. There is a six foot wooden fence along the western property line, which provides further buffering from noise and visual impacts. The applicant testified that additional shrubbery and evergreen trees will be planted on this portion of the site.

7. The subject lot is within 200 feet of the restaurant it is proposed to serve.

8. No parked cars will extend over any lot or building line.

9. The lot will be paved with an all-weather impervious surface.

10. The entrance and exit are more than twenty-five feet from the nearest street intersections. The exit would be controlled by a speed bump, a stop sign and a "do not enter" sign. A concrete curb along the alley will insure that cars use only the entrance and exit lanes to gain access to and from the lot. Guardrails on both sides of the lot will keep cars from cutting across adjoining lots.

11. Two light standards will be erected. Said lighting will be directed downward and sixty feet from the rear property line to avoid spillover onto residential properties.

12. The lot will be closed and chained nightly at 9 P.M.

13. The subject lot is 9,099.6 square feet in area. The applicant testified that the lot is too small and due to its alley frontage is inappropriately located for any R-1-B

use, with the exception of a private garage capable of housing two cars for which there is no demand in the area.

14. The applicant's traffic expert testified that peak hour demand for parking for the restaurant totals twenty-six spaces. He further testified that the additional traffic created by the proposed parking spaces can adequately be accommodated in the alley and on nearby streets, and that the noise level will not be substantially increased. The Board so finds.

15. The Department of Transportation, by memorandum dated February 23, 1982, reported that its review of the subject application discloses that no adverse traffic impacts have been identified or reported. The memorandum referred to the Department's recommendation dated September 24, 1980, that the granting of BZA No. 13346 be contingent upon the applicant agreeing to the following:

1. Install and maintain speed bumps in the drive-thru lane from Connecticut Avenue leading to the accessory parking lot.
2. Install and maintain Stop signs at each of the two driveways entering the alley.
3. Construct concrete curb at the property line between the two parking lot driveways. This will prevent traffic entering or leaving the lot except at the driveways.
4. Eliminate the diagonal parking space located adjacent to the alley.
5. Install fencing at the south, west, and north sides of the lot to provide security for the adjacent residential properties.
6. Provide visual buffering between the lot and the residential properties, by additional plantings or appropriate fencing.

The DOT noted that the plans, dated May 12, 1981, and known as Exhibit No. 2 of the record in the subject case, have incorporated its prior recommendations and the Department, therefore, had no objection to the granting of this application.

16. Mrs. Gloria Corn, Vice-Chairperson of Advisory Neighborhood Commission 3F testified that the ANC resolved not to oppose the application because the Burger King has been a good neighbor and maintains a clean facility, and the adjacent properties in the alley are used for parking

purposes. She noted that the ANC position on this application is a reversal of the position of the ANC in BZA No. 13346 which was heard before the construction of the restaurant. Mrs. Corn also testified in support as an affected individual for the same reasons.

17. Mr. Robert McDiarmid testified in opposition to the application on behalf of the Forest Hills Citizens Association. He expressed concerns regarding traffic impacts in the alley, specifically as related to poor visibility, increased traffic volume and pedestrian safety. He indicated that the Association's opposition is essentially identical to the opposition expressed in the record of BZA No. 13346.

18. Mrs. Edith Dawson, owner of 4421 and 4425 35th Street, N.W. immediately to the rear of the subject site, appeared at the public hearing in opposition to the application. The opposition was based on an increase in noise and traffic impacting on the residential property to the rear of the subject lot.

19. As to the issues raised by the persons in opposition, based on the report of the Department of Transportation and the applicant's expert traffic witness, the Board finds that there would be no adverse impacts on traffic by reason of the location and operation of the proposed parking lot. Based on Findings of Fact No. 6, 11 and 12, the Board finds that there will be no substantial negative effects on adjoining residential properties. The Board will further impose conditions on approval of the application to lessen any adverse conditions and will limit approval to a period of three years in order to be able to monitor and assess impacts at the end of that period.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking a special exception. In order to be granted such an exception, the applicant must demonstrate compliance with Paragraph 3101.410 of the Zoning Regulations. The Board concludes that the parking cannot be located on the same lot as the building which it serves as evidenced by Finding of Fact No. 5. The D.C. Department of Transportation has reviewed the application and with conditions has no objection to the use of the lot as noted in Finding of Fact No. 15.

The Board further concludes that the concerns of the opposition have been addressed by the applicant and the use is, therefore, not likely to become objectionable to adjoining or nearby property because of noise, traffic or other objectionable conditions.

The Board further notes that the application requested that the Board consider the alternative of approving parking on the lot as a use variance. The Board concludes that its approval of the application as a special exception makes it unnecessary to further consider whether there is a basis for granting such a variance.

Based on the record, and with the following conditions, the Board concludes that the application can be granted as in harmony with the general purpose and intent of the Zoning Regulations and will not tend to adversely affect the use of neighboring property if the following conditions are adhered to. The Board further concludes that the application conforms with Paragraph 3101.410 of the Zoning Regulations. Accordingly, it is ORDERED that the subject application is GRANTED SUBJECT to the following CONDITIONS:

1. Approval shall be limited to a period of three years from the final date of this Order.
2. The applicant shall eliminate the diagonal parking space adjacent to the alley as shown on the plan marked as Exhibit No. 2 of the record and shall plant that space and the adjoining area with an evergreen privet hedge.
3. The lot shall be landscaped with Canadian Hemlock at the western side. The minimum planting size shall be six feet in height. The Canadian Hemlocks are to be planted fifteen feet on center. The lot shall be landscaped at its north and south boundaries to separate it from other parking lots.
4. The lot is to be closed nightly at 9:00 P.M. and is to be secured with a cable or chain.
5. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface.
6. Bumper stops shall be erected and maintained for the protection of all adjoining buildings.
7. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space.
8. All parts of the lot shall be kept free of refuse or debris and shall be paved or landscaped. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance.

9. No other use shall be conducted from or upon the premises and no structure other than an attendant's shelter shall be erected or used upon the premises unless such use or structure is otherwise permitted in the zoning district in which the parking lot is located.
10. Any lighting used to illuminate the parking lot or its accessory building shall be so arranged that all direct rays of such lighting are confined to the surface of the parking lot.

VOTE: 5-0 (Walter B. Lewis, William F. McIntosh, Connie Fortune, Douglas J. Patton and Charles R. Norris to GRANT).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:



STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: JUL - 6 1982

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS AND INSPECTIONS.